

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference <b>C05059</b>	<b>FOR FURTHER ACTION</b>		See item 4 below
International application No. <b>PCT/AU2005/000539</b>	International filing date (day/month/year) <b>15 April 2005 (15.04.2005)</b>	Priority date (day/month/year) <b>15 April 2004 (15.04.2004)</b>	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant <b>RESMED LIMITED</b>			

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44bis.1(a).
2. This REPORT consists of a total of 6 sheets, including this cover sheet.  
  
In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Box No. I   | Basis of the report   |
| <input type="checkbox"/> Box No. II             | Priority  |
| <input checked="" type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability  |
| <input checked="" type="checkbox"/> Box No. IV  | Lack of unity of invention  |
| <input checked="" type="checkbox"/> Box No. V   | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI             | Certain documents cited   |
| <input type="checkbox"/> Box No. VII            | Certain defects in the international application  |
| <input type="checkbox"/> Box No. VIII           | Certain observations on the international application   |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis.2).

The International Bureau of WIPO 34, chemin des Cornettes 1211 Geneva 20, Switzerland  Facsimile No. +41 22 338 32 70	Date of issuance of this report <b>19 October 2006 (19.10.2006)</b>
	Authorized officer  <b>Dorothee Mülhausen</b>  e-mail: <a href="mailto:pt01@wipo.int">pt01@wipo.int</a>

# PATENT COOPERATION TREATY

From the:  
INTERNATIONAL SEARCHING AUTHORITY

<b>To:</b>  Halford & Co. No 1 Market Street SYDNEY NSW 2000
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**PCT**

REC'D 27 JUN 2005

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference <b>C05059 GD:AM</b>	<b>FOR FURTHER ACTION</b> See paragraph 2 below	
International application No. <b>PCT/AU2005/000539</b>	International filing date (day/month/year) <b>15 April 2005</b>	Priority date (day/month/year) <b>15 April 2004</b>
International Patent Classification (IPC) or both national classification and IPC <b>Int. Cl. <sup>7</sup> A61M 16/08</b>		
Applicant <b>RESMED LIMITED et al</b>		

1. This opinion contains indications relating to the following items:

- |                                     |              |  |
|-------------------------------------|--------------|--|
| <input checked="" type="checkbox"/> | Box No. I    | Basis of the opinion   |
| <input type="checkbox"/>            | Box No. II   | Priority   |
| <input checked="" type="checkbox"/> | Box No. III  | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability   |
| <input checked="" type="checkbox"/> | Box No. IV   | Lack of unity of invention   |
| <input checked="" type="checkbox"/> | Box No. V    | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/>            | Box No. VI   | Certain documents cited  |
| <input type="checkbox"/>            | Box No. VII  | Certain defects in the international application   |
| <input type="checkbox"/>            | Box No. VIII | Certain observations on the international application  |

## 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the IPEA/AU  
 AUSTRALIAN PATENT OFFICE  
 PO BOX 200, WODEN ACT 2606, AUSTRALIA  
 E-mail address: pct@ipaustralia.gov.au  
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Authorized Officer  
**AMOD PRADHAN**  
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WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/AU2005/000539

Box No. 1 Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material  
☐ a sequence listing  
☐ table(s) related to the sequence listing
  - b. format of material  
☐ in written format  
☐ in computer readable form
  - c. time of filing/furnishing  
☐ contained in the international application as filed.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

international application No.

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos: 9-33, 35-49, 51-54

because:

☐ the said international application, or the said claim Nos.

relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos.  
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos.  
are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claims Nos.

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form ☐ has not been furnished

☐ does not comply with the standard

the computer readable form ☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/AU2005/000539

Box No. IV Lack of unity of invention

1. ☒ in response to the invitation (Form PCT/ISA/206) to pay additional fees the applicant has:

- ☐ paid additional fees  
☐ paid additional fees under protest  
☒ not paid additional fees

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is

- ☐ complied with  
☒ not complied with for the following reasons:

1. Claims 1-8, 34 and 50 are directed to a conduit and its method of use for delivering a supply of gas under positive pressure comprising a conduit wall which is deformable between an open and collapsed condition. It is considered that the conduit wall which is deformable between an open and collapsed condition comprises a first "special technical feature".
2. Claims 9-33, 51 and 52 are directed to headgear or a nasal assembly for delivering a supply of gas under positive pressure to a patient comprising a pair of side portions adapted to extend along opposite sides of the patient's head, each side portion defining a conduit. It is considered that each side portion defining a conduit comprises a second special technical feature.
3. Claims 35-49, 53 and 54 are directed to a method for constructing headgear comprising mapping the shape of a particular patient's head and forming the headgear in accordance with the mapping of the shape of the head. It is considered that mapping the shape of a particular patient's head and forming the headgear in accordance with the mapping of the shape of the head comprises a third special technical feature.

Since the abovementioned groups of claims do not share any of the technical features identified, a "technical relationship" between the inventions, as defined in PCT rule 13.2 does not exist. Accordingly the international application does not relate to one invention or to a single inventive concept, a priori.

4. Consequently, this opinion has been established in respect of the following parts of the international application:

- ☐ all parts  
☒ the parts relating to claims Nos. 1-8, 34, 50

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/AU2005/000539

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability: citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 3-7	YES
	Claims 1, 2, 8, 34, 50	NO
Inventive step (IS)	Claims 7	YES
	Claims 1-6, 8, 34, 50	NO
Industrial applicability (IA)	Claims 1-8, 34, 50	YES
	Claims	NO

2. Citations and explanations:

D1 US 5765557

D2 US 5538000

Novelty (N) Claims 1, 2, 8, 34, 50

Claims 1, 50

D1 and D2 each disclose all the features of claims 1 and 50. For example, in D1 see:

conduit wall column 6, lines 22-24 Fig. 1, item 14

first conduit end column 6, lines 28-29 Fig. 2

second conduit end column 8, lines 24-26 Fig. 2

conduit passage column 6, lines 22-24 Fig. 1

conduit passage open condition column 6, lines 26-37 Fig. 1, item 18

conduit passage collapsed condition column 6, lines 24-25 Fig. 1, item 16

Claims 2, 8, 34

D1 discloses all the features of claims 2, 8 and 34. In particular, it discloses that the supply of gas urges the conduit wall into the open condition and that at least a portion of the conduit wall has elasticity (column 6, lines 26-28 and 59-62).

The features of the remaining claims are not found in any single document published before the earliest priority date of the claims.

Inventive Step (IS) Claims 1-6, 8, 34, 50

Claims 1, 2, 8, 34, 50

As above.

Claims 3-6

The features added by these claims relate to the manufacture of the conduit wall from materials that are common general knowledge in the art and which cannot be considered as contributing to patentable ingenuity.

The feature of claim 7, wherein the conduit wall has a double wall construction including an inner wall and an outer wall and defining a substantially gas tight space therebetween, were not found in any other document that would be regarded, by a person skilled in the art, as being obvious to combine with either of the above documents.